

## REMARKS

Examiner Kidest Bahta and Applicants' attorney, John J. Connors, had a telephone interview initiated by Examiner Bahta concerning Claims 13 and 14. It was Applicants' attorney's impression that rejection of Claims 1 through 12 had been withdrawn and that Claims 13 and 14 were not being rejected under 35 USC 112, but simply needed to be re-written in independent form. The "Supplemental Reply" faxed November 11, 2003, was believed to place the application in a condition for allowance. In the Office Action November 14, 2003, the Examiner drew to the attention of Applicants' attorney that all the claims under consideration needed to be restated and marked as indicated above.

## FESTO DOCTRINE

Claims 13 and 14 have been re-written in independent form and, consequently, avoid the application of the Festo doctrine, Festo Corp. v Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd., et al 535 U. S. 722 (2002). The Applicant does not consider these changes to Claims 13 and 14 to be an amendment as contemplated in Festo, resulting in surrendering any patentable subject matter because the Examiner only objected to the form of these claims, necessitating that they to be rewritten in independent form.

Claims 13 and 14 re-written in independent form are entitled to the application of the doctrine of equivalents under Warner-Jenkinson v. Hilton Davis Chemical Co., 520 U. S. 17 (1997).

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In view of the above changes, the application is deemed to be in a condition for allowance and such action is solicited.

### TELEPHONE INTERVIEW

If the Examiner believes that a telephone interview would advance the allowance of this application, Applicant's attorney requests the Examiner call to arrange a date and time for such interview after having an opportunity to review the above amendments and consider the above remarks.

### EXTRA FEE

Any additional fees should be charged to Applicant's attorney deposit account as indicated below.

### CUSTOMER NUMBER

Please note Applicant's attorney Customer No. 021905, and confirm that this customer number has been entered in the U. S. Patent & Trademark Office records in connection with the above identified application.

Respectfully submitted,

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### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being mailed with the United States Postal Service as First Class Mail, the correct postage paid, in an envelope addressed to: Honorable Commissioner of Patents, P. O. Box 1450, Alexandria, VA 22313-145020231, on Dec 10, 2003

By: 

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The commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 03-2830.

By: 